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SUPREME COURT, U. S.

No. 73-697

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MICHAEL RODAK, JR.,

In the Supreme Court of the United States

OCTOBER TERM, 1973

SYDNEY GETTELMAN, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

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This is the second time that petitioner has initiated a suit against the Commissioner of Internal Revenue seeking a reward for information furnished various revenue agents regarding the estate tax returns of Frances Conne and Louis Conne.

In the prior case, *Gettelman* v. *Commissioner of Internal Revenue* (C.A. 7, No. 71-1360) unreported order (Order of January 4, 1972), certiorari denied, 407 U.S. 915, where the identical claim was made, the court of appeals held that under Section 7623 of the Internal Revenue Code of 1954, the Commissioner's payment of a reward to informers was entirely discretionary, and that an attempt to enforce such a claim against the Commissioner was a suit against the United States which was barred by sovereign immunity (Pet. App. C 4). See *Magnus* v. *United*

States, 234 F. 2d 673 (C.A. 7). Since the issue raised here by petitioner has already been litigated in a prior case in which a final judgment was rendered against him, the court of appeals correctly held that this action is barred by *res judicata* (Pet. App. C 1-2).[1] Contrary to petitioner's contention (Pet. 2, 7-9, 14-15), the Constitution does not prohibit the operation of the doctrine of *res judicata.*[2] See *e.g., Commissioner* v. *Sunnen,* 333 U.S. 591; *United States* v. *International Building Co.,* 345 U.S. 502; *Pepper* v. *Bankers Life and Casualty Co.,* 414 F. 2d 356 (C.A. 8).

It is respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

JANUARY 1974.

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[1]Moreover, as the court of appeals stated in its first decision, the Commissioner had processed petitioner's claim for a reward by denying his claim (Pet. App. C 3-4). There was thus full compliance with Section 301.7623-1(c) of the Treasury Regulations on Procedure and Administration.

[2]The court of appeals denied petitioner's petition for rehearing and suggestion for rehearing *en banc* (Pet. App. A). Petitioner argues (Pet. 9) that the clerk of the court of appeals failed to transmit his petition for rehearing and suggestion that rehearing be *en banc* in violation of Rule 35(b) of the Federal Rules of Appellate Procedure. But that rule merely provides that a party's suggestion for a hearing or rehearing *en banc* will be transmitted by the clerk to the court but that no vote will be taken on the suggestion unless a judge on the panel that rendered the decision or a judge in regular active service requests one. Here, the corrected order issued by the court of appeals on August 6, 1973 (Pet. App. A) indicates that the clerk complied with Rule 35(b), and that no vote was requested by either a member of the panel or a judge in active service.

DOJ-1974-01

SUPREME COURT, U. S.

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OCTOBER TERM 1973

Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

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U.S. COMMISSIONER OF INTERNAL REVENUE

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ON PETITION FOR A WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

CHICAGO, ILLINOIS

APPLICATION TO SUSPEND ORDER OF DENIAL

OF CERTIORARI

....

SYDNEY GETTELMAN PRO SE

5200 North Sheridan Road

Chicago, Illinois 60640

275-3385

March 26, 1974

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

March 4, 1974

Mr. Sydney Gettelman
5200 North Sheridan Road
Chicago, Ill. 60640

RE: GETTELMAN v. U.S. COMM'R. OF INT. REVENUE, 73-697

Dear Sir:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Very truly yours,

MICHAEL RODAK, JR., Clerk
By

Helen Taylor
Helen Taylor, (Mrs.)
Assistant Clerk

On March 4, 1974, this Court entered an order, denying the Petition for Writ of Certiorari in the above-entitled case.

Pursuant to Rule 25 (2), application is hereby made to suspend the order denying the Petition for Certiorari pending the filing and the final disposition of the Petition for Rehearing, which , it is contemplated, will be filed by the Petitioner, Pro Se. It is intended that such a Petition for Rehearing will be promptly filed, based on grounds permitted by Rule 58 (2). Grounds to be included in such Petition for Rehearing relate to this Court's authority and responsibility to declare the court of appeals decision rendered in this case, void. On the basis that it conflicts with due process, equal protection of the laws, right to petition the Government for redress of grievances, guaranteed

the Petitioner by the Constitution and Bill of Rights., This invalid appellate court decision deprived the Petitioner of appellate review, to which this Petitioner is entitled.

Review on Writ of Certiorari is here a matter of right, not a matter of judicial discretion, review on Writ of Certiorari is here mandatory.

To deny this would be to affirm that the fountain of power has passed from the People to the People's deputies, that the reservations of particular rights and privileges, which are spelled out in the Constitution and Bill of Rights, mean nothing, and would be to affirm government without consent of the People. Until the People have, by some solemn and authoritative act, annulled or changed the established form, it is binding upon themselves collectively, as well as individually; and

presumption, or even knowledge, of their sentiments, can warrant their deputies in a departure from it, prior to such an act.

WHEREFOR Petitioner prays that this Application be granted.

Petitioner certifies that Petition would be presented in good faith, and not for delay.

Petitioner certifies that the Petition would be restricted to the grounds above-specified.

Sydney Gettelman

SYDNEY GETTELMAN PRO SE

March 26, 1974